

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LIBERTY MUTUAL INSURANCE COMPANY

Plaintiff,

07 CV 11292 (JFK)

- against -

**DECLARATION OF
ANDREW M. PREMISLER**

TRAVELERS PROPERTY CASUALTY COMPANY
OF AMERICA f/k/a THE TRAVELERS
INDEMNITY COMPANY OF ILLINOIS,

Defendant.

ANDREW M. PREMISLER, ESQ., pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a partner with the law firm of Lazare Potter Giacobas & Kranjac, LLP, attorneys for Defendant Travelers Property Casualty Company of America (“Travelers”) f/k/a The Travelers Indemnity Company of Illinois. I submit this declaration in support of Travelers’ motion to dismiss the complaint in lieu of an answer and based upon a review of applicable documentation.

2. Travelers’ arguments are set forth in detail in the accompanying memorandum of law and will not be repeated here. Listed below are descriptions of the exhibits referred to in Travelers’ memorandum and attached to this declaration.

Exhibit “A”	The December 17, 2007 Complaint in this action;
Exhibit “B”	The declaration page of Travelers policy number DT-CO-963K2686-TIL-03 (“the Travelers/R&J Policy”) issued to named insured R&J Construction Corp. (R&J”) referenced in the Complaint. (Premisler Dec., Exh. “A”[at ¶ 15]).
Exhibit “C”	Excerpts from Liberty policy number DGL-NY-078805-012 (the “Liberty Policy”) issued to its named insured VJB referenced in the Complaint, including the commercial general liability coverage form. (Premisler Dec., Exh. “A”

[at ¶ 21]). Liberty previously provided Travelers with a copy of this policy in connection with the state action and Travelers will be pleased to provide the Court with the same upon request.

- Exhibit “D” The January 9, 2001 Subcontract between Kajima/VJB Construction Services, LLC and R&J Construction referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 7 to 14]).
- Exhibit “E” The Summons and Verified Third-Party Complaint in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).
- Exhibit “E-1” The Supplemental Summons and Amended Complaint in the underlying state action referenced in the Complaint, (Premisler Dec., Exh. “A” [at ¶ 6]), which was attached to the Verified Third-Party Complaint in the underlying state action.
- Exhibit “E-2” VJB Construction Corp.’s (“VJB”) March 23, 2004 Verified Answer, Affirmative Defenses and Cross Claims in the underlying state action referenced in the Complaint, (Premisler Dec., Exh. “A” [at ¶ 6]), which was attached to the Verified Third-Party Complaint in the underlying state action.
- Exhibit “F” 475 Ninth Avenue Associates LLC’s (“475 Ninth”) June 21, 2004 Verified Answer in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).
- Exhibit “G” Travelers’ Verified Answer to the Third-Party Complaint in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).
- Exhibit “H” The September 24, 2004 Notice of Substitution of Counsel in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).
- Exhibit “I” The April 28, 2005 Order in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).

Exhibit “J”	The October 13, 2005 Order in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).
Exhibit “K”	The June 9, 2005 Order in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]). ¹
Exhibit “L”	475 Ninth, VJB, Liberty and others’ May 16, 2005 Summons and Second Third-Party Complaint in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).
Exhibit “M”	475 Ninth, VJB, Liberty and others’ May 3, 2007 Amended Second Third-Party Complaint in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).
Exhibit “N”	Travelers’ June 8, 2007 Answer to the Amended Second Third-Party Complaint in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).
Exhibit “O”	The Notice of Entry and the August 6, 2007 Order in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).
Exhibit “P”	The transcript of the November 9, 2007 court proceedings in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).
Exhibit “Q”	The Notice of Entry and the transcript of the December 6, 2007 court proceedings in the underlying state action referenced in the Complaint. (Premisler Dec., Exh. “A” [at ¶ 6]).
Exhibit “R”	The December 26, 2007 Notice of Consent to Change Attorney and the Consent to Change Attorney in the

¹ Prior thereto, on November 5, 2007, all parties appeared before the Honorable Shirley Werner-Kornreich and advised her of the agreement. Although 475 Ninth, VJB and Liberty’s counsel refused to sign a stipulation discontinuing the first-party action against 475 Ninth, the state court accepted Santoli’s discontinuance of the action against 475 Ninth and directed that the trial go forwarded only against VJB.

underlying state action referenced in the Complaint.
(Premisler Dec., Exh. "A" [at ¶ 6]).

3. Thus, based upon the above and for the reasons stated in the accompanying memorandum of law, Travelers respectfully asks the Court to dismiss the complaint in its entirety.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on January 22, 2008 in New York, New York.

s/ Andrew M. Premisler
Andrew M. Premisler, Esq.

CERTIFICATE OF SERVICE

I, Andrew M. Premisler, Esq., hereby certify that on January 22, 2008, the foregoing Declaration of Andrew M. Premisler, Esq. was filed with the Clerk of the District Court by electronic filing using the CM/ECF system and served by electronic filing and regular mail upon the following parties:

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Dated: New York, New York
January 22, 2008

s/ Andrew M. Premisler
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